IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

Bail Appl..No. 4042 of 2007()

CC.2689/2003 of J.M.F.C.-I, KOLLAM
CRIME NO.293/2003 OF KILIKOLLOOR POLICE STATION

.....

PETITIONER : 2ND ACCUSED;

RAJAMMA, D/O.LEKSHMI, AGED 57 YEARS,
RESIDING AT JAYACHANDRA BHAVANAM,
(THOTTETHEKKADATHU THARAYIL VEEDU), KAPPILKIZHAKKU MURI, KRISHNAPURAM VILLAGE, KARTHIKAPPALLY TALUK, ALAPPUZHA DISTRICT.

BY ADV. SRI. K.SIJU

RESPONDENTS:

STATE OF KERALA REPRESENTED BY SI OF
POLICE, KILLIKOLLOOR POLICE STATIONL THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4042 of 2007

Dated this the 11th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Section 498 A I.P.C. When the matter came up for trial on 31.05.2007, the witnesses Cws 1 to 3 were present, but the accused were absent. The counsel only filed an application to excuse the absence of the accused, but did not specifically pray for exemption of the accused and for trial to proceed in their absence. The learned Magistrate in his report submits that the defence counsel was not prepared to cross examine the witnesses though accused were absent. In these circumstances, the learned Magistrate issued coercive processes against the accused. The petitioner now finds such processes chasing her. According to her, she is innocent. Her absence was not wilful and trial could have proceeded even in her absence.

2. I find no merit in these contentions. The copy of the petition filed by the counsel which has been produced along with the report of the learned Magistrate shows that the counsel had not applied for exemption to represent the accused and for the progress of the trial under Section 317 Cr.P.C.

3. Be that as it may, the petitioner must now appear before the learned Magistrate and seek regular bail. I find no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits, in accordance with law and expeditiously.

4. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously- on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-

R.BASANT, J

B.A.No.4042 of 2007

Dated this the 5th day of July, 2007

ORDER

The petitioner, a woman, has come to this Court complaining about the unjustified issue of non bailable warrant against her by the learned Magistrate.

2. The petitioner faces allegations under Section 498 A I.P.C. She had appeared before the learned Magistrate. She was enlarged on bail. The case was posted for trial. The petitioner could not appear on that day. Through her counsel, she filed an application for exemption from personal appearance. She did not dispute the identity at all. But in spite of all this and in spite of the direction in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339], the learned Magistrate dismissed the application and chose to issue non bailable warrant against the petitioner, submits the learned counsel for the petitioner.

3. Call for a report from the learned Magistrate about the circumstances under which the non bailable warrant was issued against the petitioner. A copy of the application and the order

dismissing the prayer for exemption shall also be made available to this Court on the next date of posting.

4. Call on 11.07.07. The Registry shall ensure that the report is received by then.

5. In the meantime, the non bailable warrant issued against the petitioner shall not be executed and she shall be permitted to appear through counsel and claim exemption from personal appearance until further orders. The trial can proceed.

(R.BASANT, JUDGE)

rtr/-